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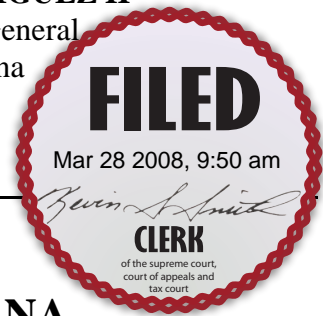
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**IN THE  
COURT OF APPEALS OF INDIANA**

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THOMAS BURZYNSKI,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 71A03-0706-CR-297

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D01-0505-FD-491

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**March 28, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

Thomas Burzynski appeals his conviction for operating a motor vehicle while intoxicated (“OWI”) with a prior OWI conviction, a class D felony,<sup>1</sup> claiming that the evidence is insufficient to establish that he was intoxicated. We affirm.

In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor judge the credibility of witnesses; rather, we consider only the evidence that supports the verdict and draw all reasonable inferences from that evidence. *Riley v. State*, 711 N.E.2d 489, 494 (Ind. 1999). We will affirm the conviction if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable jury to find the defendant guilty beyond a reasonable doubt. *Id.*

To convict Burzynski, the State had to prove beyond a reasonable doubt that he was operating a vehicle while intoxicated in a manner that endangers a person.<sup>2</sup> Here, the record shows that at around 1:00 a.m., on May 17, 2005, a Mishawaka police officer approached Burzynski’s vehicle to check on his welfare. Burzynski’s vehicle was parked facing northbound in a southbound lane, twelve to fifteen feet from a railroad track. The officer saw that Burzynski was slumped over in the driver’s seat, the keys were in the ignition, the car was running, and the gearshift was in drive. Another officer arrived at the scene, and the two officers attempted to wake Burzynski by pounding on the car window. Burzynski woke up and opened the door after several failed attempts. Burzynski smelled of alcohol, his eyes were glassy and bloodshot, he was staggering, his speech was slurred, and he was leaning on

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<sup>1</sup> Ind. Code § 9-30-5-3.

<sup>2</sup> Ind. Code § 9-30-5-2(b).

the vehicle for balance. Burzynski was transported to the police station to conduct field sobriety tests.

At the station, Burzynski denied having any physical problems that could interfere with the sobriety tests. The officer administered three field sobriety tests, which Burzynski failed. An officer also administered two breath tests with a BAC DataMaster; the evidence ticket from the first test showed that the breath sample was invalid, but the ticket from the second test reported a BAC of 0.12.

Burzynski asserts that he

sufficiently explained at trial that all the reasons which gave [the officer] “probable cause” to offer chemical testing were insufficient. If he was slumped over the wheel or slow to respond, it was due to his lack of sleep and to the effect of his brain injury, not due to intoxication. Similarly, the reason for failure of the field sobriety tests was not intoxication, but his physical impairments.<sup>[3]</sup>

Appellant’s Br. at 5.

It was the jury’s province to weigh Burzynski’s testimony against that offered by the police officers. Burzynski’s argument is merely an invitation to reweigh the evidence, which we must decline.

Affirmed.

BARNES, J., and BRADFORD, J., concur.

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<sup>3</sup> Burzynski asserts that he suffers from nystagmus, a misplaced bone in his foot that causes balance problems, back surgery, and traumatic brain injury.